

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JEROME ZEIDMAN,

Plaintiff,

v.

U.S. POST OFFICE,

Defendant.

CA NO.: 05-10670-EFH

DEFENDANT'S MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. 12(b)(1), 12(b)(6), and 12(h)(3), defendant United States moves that the Complaint be dismissed with prejudice. As set forth more fully in the accompanying Memorandum of Law in Support of Defendant's Motion to Dismiss, the Court lacks jurisdiction over plaintiff's claim because the United States has not waived its immunity for "any claim arising out of the loss, miscarriage or negligent transmission of letters or postal matter." 28 U.S.C. § 2680(b).

WHEREFORE, the United States requests that the Court grant this Motion and dismiss the Complaint with prejudice.

Respectfully submitted,

By their attorney,

MICHAEL J. SULLIVAN
United States Attorney

Dated: 21 April 2005

By: /s/ Barbara Healy Smith
Barbara Healy Smith
Assistant U.S. Attorney
John Joseph Moakley U.S. Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3263

CERTIFICATE OF SERVICE

This is to certify that I have this 21st day of April 2005, served upon the *pro se* plaintiff a copy of the foregoing Motion and the accompanying Memorandum of Law by depositing in the United States mail a copy of same in an envelope bearing sufficient postage for delivery, addressed to Jerome Zeidman, 27 Walden Drive, S. Easton, MA 02375.

/s/ Barbara Healy Smith
Barbara Healy Smith
Assistant United States Attorney

CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 7.1(a)(2)

Pursuant to Local Rule 7.1(a)(2), the undersigned counsel certifies that on April 20, 2005, she conferred with the *pro se* plaintiff by telephone regarding the grounds for and relief requested by this motion.

/s/ Barbara Healy Smith
Barbara Healy Smith
Assistant United States Attorney